IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 196 /2004

Petitioner : SMT. SHAKUNTALA DEWANGAN
W/o Shri Dilip Kumar Dewangan
aged about 35 years,
Multipurpose Health Worker (F)
Sub Health Centre, Under Primary
Health Centre, Nikum,
Tah. & Distt. Durg (C.G.)

VERSUS

Respondents : 1. State of Chhattisgarh, ,
through : Secretary
Public Health Family Welfare
and Medical Department,
Govt. of Chhattisgarh,
Mantralaya, D.K.S. Bhawan,
G.E. Road, Raipur (C.G.)

2. Chief Medical and Health Officer,
District Hospital Durg (C.G.)

3. Block Medical Officer,
Primary Health Centre, Nikum,
Tah. & Distt. Durg (C.G.)

4. Shri R. P. Verma,
Under Secretary,
Public Health, Family Welfare and
Medical Education,
Govt. of Chhattisgarh,
Raipur (C.G.)

P. R. No. 1932/04
Presented by Shri V.V. Tamaskar
dated 19/8/04

RECEIVED-COPY
Clerk to A. G. Bilaspur

5. Shri Sudhir Kale,
Assistant Grade I
Officer of Under Secretary,
Public Health Family Welfare
and Medical Education,
Govt. of Chhattisgarh, Raipur

6. Smt. Sumeeta Ghosh,
A.N.M., Sub Health Centre,
village Pauwara,
Tah. & Distt. Durg (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(78)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.196 of 2004

Smt. Shakuntala Dewangan

- Versus -

State of Chhattisgarh and five others

POST FOR ORDER ON 15TH APRIL, 2005

Sd/-
L.C. Bhadoo
Judge

(79)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.196 of 2004

Smt. Shakuntala Dewangan

- Versus -

State of Chhattisgarh and five others

Present: -

Mr. V.G. Tamaskar, Advocate:	For the petitioner.
Mr. U.N.S. Deo, Govt. Advocate:	For the State/respondents No.1, 2 & 3.
Mr. R.M. Solapurkar, Advocate:	For respondents No.4 & 5.
Mr. Pankaj Shrivastava, Advocate:	For respondent No.6.

O R D E R

(Passed on 15th April, 2005)

L.C. BHADOO, J.

1. The petitioner, who is working as Multipurpose Health Worker, has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality and propriety of the order dated 5-1-2004 (Annexure P-13) whereby the order dated 1-10-2003 (Annexure P-10) transferring the petitioner from Sub Health Centre: Mardel, Sub Division: Daundi, District: Durg to Sub Health Centre: Pauwara, Primary Health Centre: Nikum, District: Durg has been cancelled, and also the order dated 23rd June, 2003 (Annexure P-7), whereby the petitioner's posting at Sub Health Centre: Mardel, Sub Division: Daundi has been restored.

2. Brief facts leading to filing of this writ petition are that the petitioner is a Health Worker under the Health, Family Welfare and Medical Education Department. In the month of February, 2002 she was working at Sub Health Centre: Khapri, Primary Health Centre: Balod, and vide order dated 4-2-2002 (Annexure P-1) on her own request she was transferred to Primary Health Centre: Nikum, Sub Health Centre: Pauwara temporarily, until further orders. However, vide order dated 11-2-2002 (Annexure P-2) the said order was modified as at the transferred place i.e. Nikum no vacant post was available and the petitioner was directed to work at Borsi which

was under Primary Health Centre: Nikum, until further orders. Thereafter, vide order dated 23rd June, 2003 (Annexure P-7) the petitioner was transferred to Sub Health Centre: Mardel, Sub Division: Daundi, District: Durg. However, the said order was cancelled vide order dated 1-10-2003 (Annexure P-10) and the petitioner was again posted at Sub Health Centre: Pauwara, Primary Health Centre: Nikum. However, again vide order dated 5-1-2004 (Annexure P-13) the order dated 1-10-2003 (Annexure P-10) was cancelled and that of the order dated 23rd June, 2003 (Annexure P-7) was restored which is under challenge.

3. The case of the petitioner is that this order has been passed just to accommodate respondent No.6 and Primary Health Centre: Daundi is 120 kms. away from the petitioner's present place of posting i.e. Borsi. After the order dated 23rd June, 2003 Annexure P-7 the petitioner filed W.P.No.2136/2003 and challenged the said order. However, W.P.No.2136/2003 was disposed of by this Court vide order dated 30th July, 2003, by allowing the petitioner to make a representation and thereafter, considering the representation order dated 23rd June, 2003 was cancelled and order dated 1-10-2003 (Annexure P-10) was passed. But, again the said order has been cancelled vide the impugned order dated 5-1-2004. Since the petitioner did not satisfy the illegitimate demands made by respondents No.4 & 5, the impugned order has been passed and the petitioner has been shifted four times in a span of one year. The petitioner is not getting salary, therefore, the impugned order be set aside.

4. Return has been filed on behalf of the State/respondents No.1 to 3 in which it has been mentioned that the above order has been passed on the ground of administrative exigency and the petitioner was transferred on her own request to Primary Health Centre, Block Nikum but due to non-availability of vacant post as an administrative arrangement, she was asked to work at Borsi, she has been transferred to Mardel on the ground of administrative exigency. The petitioner was relieved on 15-7-2003 from Pauwara, Nikum.

5. Return has also been filed by respondent No.6 in which it has been mentioned that when the petitioner was transferred from Khapri to Pauwara vide order dated 4-2-2002, whereas, respondent No.6 was already working

there under order dated 10-9-2001. In spite of the fact that respondent No.6 was already working at that place, the petitioner was transferred and one Smt. K. Thakur was also working in excess in Sub Health Centre: Pauwara vide order dated 8-1-2002. Therefore, as respondent No.6 was already working there and both the petitioner and Smt. K. Thakur were transferred, later on, against one post three persons cannot be accommodated.

6. Respondents No.4 & 5 have also filed return and they have submitted that since no post was available, therefore, the petitioner and Smt. K. Thakur were transferred from Nikum. They have denied other allegations.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner argued that the petitioner has been subjected to frequent transfers in order to accommodate respondent No.6 and she is not getting salary. The petitioner failed to satisfy the requirement of respondents No.4 & 5 that is why she has been transferred frequently.

9. On the other hand, learned counsel for the respondents argued that the petitioner was working at Khapri and on her own request vide order dated 4-2-2002 (Annexure P-1) she was transferred to Nikum, whereas, respondent No.6 was already working there in pursuance of the order dated 10-9-2001, and there was only one post, and no other post was there, as such, the petitioner could not have been accommodated, that is why in the first instance she was asked to work at Borsi and later on, she was transferred to Mardel. Therefore, there is no question of adjustment of respondent No.6.

10. The settled law with regard to exercise of judicial review by the High Court under Article 226 of the Constitution of India in the matter of transfer of a Government employee is that the order of transfer is an incident of service, and it is for the appropriate authority to decide that who should be transferred where. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. This view has been taken by the Apex Court in the matter of **Union of India and others v. S.L. Abbas** reported in **AIR 1993 SC 2444**.

11. In the matter of **Rajendra Roy v. Union of India and another** reported in **AIR 1993 SC 1236**, the Apex Court held that

> "It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

12. In the matter of **State of U.P. and others v. Gobardhan Lal** reported in **2004 AIR SCW 2082**, the Apex Court held that

> "it is not for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. An officer or a servant cannot deprive or deny the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments."

The Apex Court further held that

> "The Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

13. In the matter of **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and others** reported in **2004 AIR SCW 5563**, the Apex Court held that

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer."

14. Therefore, in the light of the above settled law, we have to examine the present case as to whether the petitioner has been able to establish that she has been subjected to frequent transfers and the impugned is a mala fide exercise of power. But on facts, I am of the considered opinion that the petitioner has failed to establish this fact. Even though, in para 6.3 of the writ petition, the grounds raised therein, it has been mentioned that since the petitioner did not yield to illegitimate demands made by respondents No.4 & 5, and in order to accommodate respondent No.6 the impugned order has been passed, but there is no material placed by the petitioner to show or establish or for drawing inference regarding the mala fides of the respondents. Merely by leveling such allegations these allegations cannot be taken as established unless the same are substantiated by placing material on record, and respondents No.4 & 5 have denied the allegations in their return. Therefore, the grounds raised by the petitioner are wholly untenable because, as borne out from the record, in the year 2002 the petitioner was working at Khapri and on her own request she was adjusted to Nikum, but unfortunately when coming to know that there is no vacant post at Nikum, the petitioner was asked to work at Borsi, thereafter, she was transferred vide order dated 23rd June, 2003 (Annexure P-7) to Mardel which was challenged by her vide W.P. No.2136/2003, and the petitioner was allowed to make a representation to the competent authority. However, the order dated 23-6-2003 was cancelled and vide order dated 1-10-2003 (Annexure P-10), the petitioner was again posted at Nikum. But when there was no post available at Nikum, the impugned order was again passed. It is admitted position that respondent No.6 was already working prior to 2002 when the petitioner was posted and no transfer order was passed transferring respondent No.6 and there was only one post. Therefore, the petitioner could not be adjusted and as such, she has been

posted under the impugned order at Mardel and Mardel is also in the same District i.e. Durg.

15. In the above facts and circumstances of the case, I am of the considered opinion that the petitioner has failed to make out a case for interference by this Court by invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India.

16. In the result, the petition fails, same is liable to be dismissed and it is hereby dismissed. In the facts and circumstances of this case, there will be no order as to costs.

Sd/-
L.C. Bhadoo
Judge

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